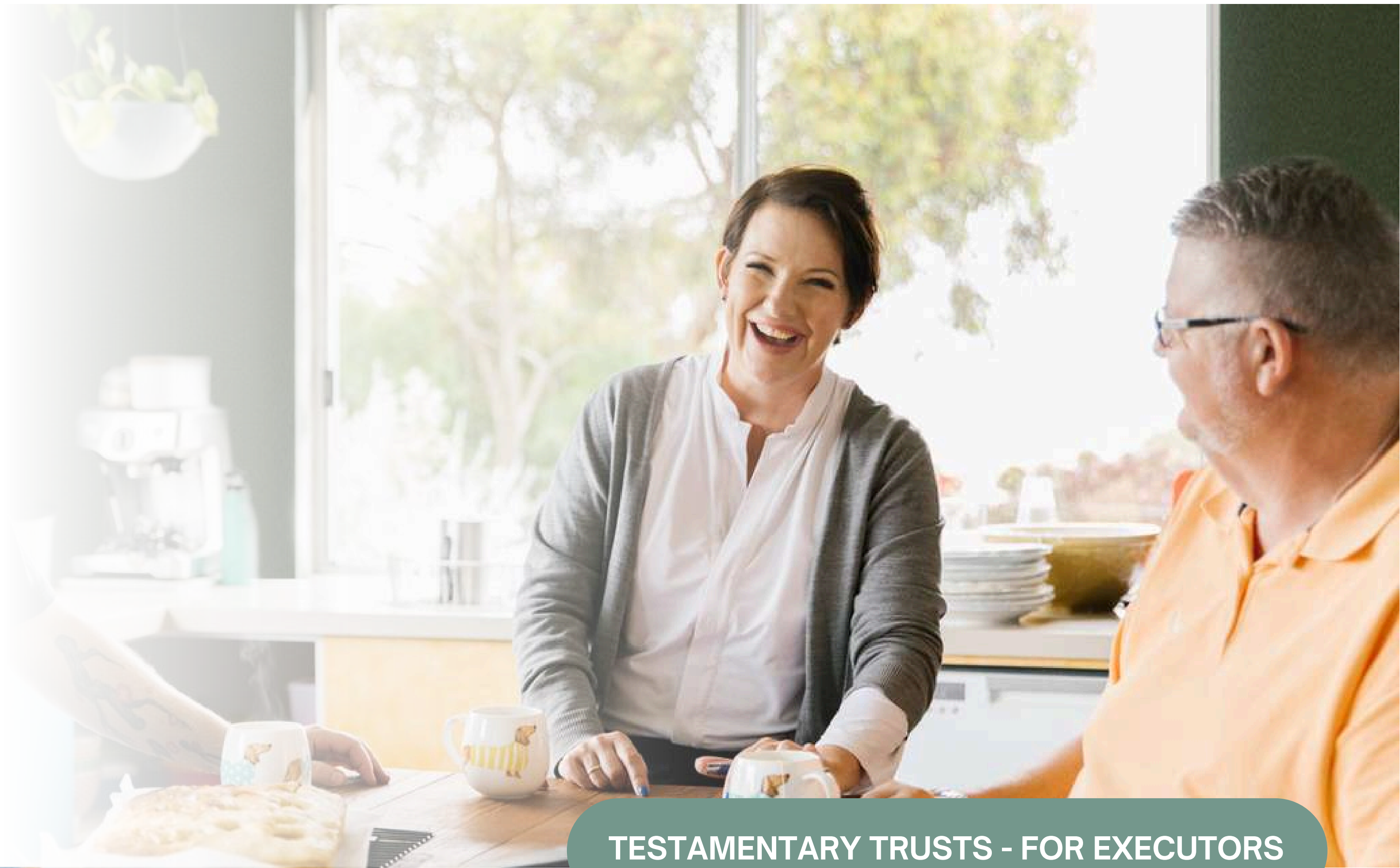


TESTAMENTARY TRUSTS - FOR EXECUTORS

Helping you set up a discretionary testamentary trust for beneficiaries

A Testamentary Trust Is The Gift Of Choice

As the executor of a deceased estate you are responsible for communicating the terms of the will to any beneficiaries (which may include you personally).

The beneficiaries of this estate have been given the opportunity to choose if they wish to receive their inheritance in a discretionary testamentary trust. A testamentary trust provides people with a range of options around how they receive and manage their inheritance and has several long term advantages.

If a beneficiary chooses (or is required) to receive their inheritance in a trust you will set this up on their behalf and act as the first trustee of their trust.

THE **ESTATE**

The beneficiaries of the estate will be provided with the option to receive their inheritance within a trust OR take it outright in their own personal name - so long as they satisfy the terms set out in the trust deed (which are included in the will).

beneficiaries can decided to

Receive their gift straight into their personal bank account.

THEY CAN:
Spend or invest their inheritance as they wish.

Manage their own money.

THEY CANNOT:
Protect their inheritance from relationship breakdown or bankruptcy.

Distribute tax free to minors.

Set up a testamentary trust at a later date: only the will maker can create the trust (which sits dormant until they die).

Receive their gift within a trust structure.

THEY CAN:
Spend or invest their inheritance as they wish.

Manage their own money (if they're able to).

Protect their inheritance from relationship breakdown or bankruptcy.

Distribute tax free to minors.

THEY CANNOT:
Set up a testamentary trust at a later date: only the will maker can create the trust (which sits dormant until they die).

WHY IS IT CALLED A TESTAMENTARY TRUST?

Testamentary is a fancy legal word for 'dead'. As such a testamentary trust is one that has been set up by the will maker before their death but remains dormant until their death.

The will maker determines the terms and conditions that govern the control and administration of the trust including; the trustees of the trust, the powers to appoint and remove trustees, and the application and use of funds held on trust.

There are some costs associated with setting up a trust for each beneficiary but these will be covered by the estate. Ongoing costs are the responsibility of each beneficiary.

Why would a beneficiary want a testamentary trust?

#1. Asset protection

Because none of the beneficiaries own the trust assets, it's very difficult for someone to argue that the assets of the trust belong to any one person and those assets do not form part of your personal estate.

This is what makes a trust so powerful at protecting your assets, particularly if you:

- have financial difficulties or bankruptcy
- run your own business
- are going through (or anticipate) a relationship breakdown

#2. Tax flexibility

A testamentary trust is the only environment where you can receive gold star tax treatment (because the ATO know someone had to die for you to set one up).

Income earned each year by the trust (from investing or owning assets) needs to be distributed to beneficiaries. As the trustee you can choose which of your beneficiaries receives income each year and how much.

As each beneficiary gets taxed at their own marginal tax rate the trustee has the flexibility to distribute to beneficiaries according to their tax rate.

An additional bonus is children under 18 are treated like adults for tax purposes, which means you can distribute approx $18,000 to each minor beneficiary, each year and pay 0% tax (depending on the tax free threshold for that financial year).

#3. You still have control

As the trustee for their own trust beneficiaries who meet the terms outline in the will, continue to have full control over how their inheritance is invested or spent and who can benefit from any income generated by the trust.

Beneficiaries can access the money in the testamentary trust any time and can wind up the trust if and when it no longer serves them.

CASE STUDY

Peter dies leaving his estate in equal shares to his sons Dave and John.

John chooses to take advantage of the testamentary trust his dad has written into his will, whilst Dave chooses to have his inheritance deposited straight into his bank account.

As the executor of the estate Dave works with John's accountant to set up a trust and then arranges for his half of the inheritance to be paid into the estate bank account. Dave then resigns as trustee of John's trust and John becomes the boss of his own trust.

John purchases two units which earn him $75,000pa income. He distributes $21,000 tax free to each of his three children (which he and his wife use to take a family holiday and pay school fees). The remainder he gives to charities of his choice.

Dave invests his money in shares which earn him $80,000 in dividends but he pays a marginal tax rate of 37% on his income.

A TESTAMENTARY TRUST HAS FAR REACHING BENEFITS AND OFFERS SIGNIFICANT ASSET PROTECTION FOR BENEFICIARIES.

What if the beneficiaries don't satisfy the terms set out in the will?

If a beneficiary doesn't satisfy the terms of the will they receive their inheritance in a trust that is managed on their behalf by a trustee (they will not get the choice of receiving their inheritance in their personal bank account).

The most common reason a beneficiary doesn't satisfy the terms of the will is they are a minor or have not reached the preservation age nominated by the will maker. Other reasons include relationship breakdown, financial difficulty or bankruptcy, addiction or mental health conditions.

As the executor do I have to act as trustee for each trust?

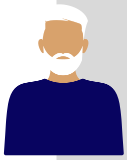
You will act as the first trustee of the trust.

If the beneficiary satisfies all conditions outlined by the will maker, you will nominate them as a trustee of their own trust and resign from your position as trustee - leaving them to manage the day to day running of their trust.

If the beneficiary does not satisfy all the conditions outlined by the will maker you can make the choice to:

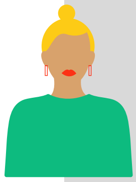
- continue to act as the trustee and make financial decisions on the beneficiaries behalf
- nominate an alternative person to act as trustee (for example the parent of a minor beneficiary)
- nominate a corporate trustee to manage the trust on behalf of the beneficiary

We will help guide you in making these decisions.



WILL MAKER

- Decides on the terms and conditions of the trust and adds them to their will.
- Trust comes into effect from date probate is granted.

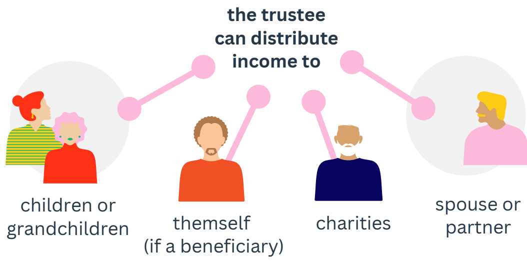


EXECUTOR (set up)

- Ensures beneficiaries satisfy the trust terms outlined in the will
- Gives beneficiaries the choice to open a trust or take their gift outright
- Sets up trusts on behalf of the beneficiaries
- Acts as the first trustee for the trust
- May act as ongoing trustee if required

TRUSTEE (ongoing) *

- Manages the day to day running of the trust
- Decides how to invest trust assets
- Prepares annual trust tax return
- Decides on distributions each year



*The will outlines who will act as a trustee for any beneficiaries who have not reached preservation age or beneficiaries who don't meet the conditions outlined in your will.

PROTECTS YOUR INHERITANCE FROM...

- Divorce or separation
- Bankruptcy or litigation
- Splitting or selling assets
- Floozies or new partners
- Estate and other taxes
- Allows intergenerational gifting

What work is involved in setting up a trust on behalf of a beneficiary?

#1. Communicate with beneficiaries

As the executor you will need to communicate the terms of the will, including the provision of a discretionary trust, with all beneficiaries. We will provide you with information to share with beneficiaries about receiving an inheritance in a testamentary trust and asking them to seek independent financial advice.

#2. Receive written instructions from beneficiaries

Beneficiaries must confirm in writing they wish to receive their inheritance through a trust. At this time the beneficiary will provide you with a name for their trust

#3. Copy of the Trust Deed

We will provide you with a copy of the Trust Deed which has been established in the will. If you are setting up multiple trusts the same trust deed will be used each time.

#4. Work with an accountant

You will work with an accountant to set up a company (to operate the trust) and apply for a tax file number on behalf of the trust.

#5. Open a bank account on behalf of the trust

You will work with an accountant to set up a company (to operate the trust) and apply for a tax file number on behalf of the trust.

#6. Distribute the estate into the trust bank account

Once you have received bank account details you can distribute the relevant share of the estate to the trust's bank account on behalf of the beneficiary.

#7. Resign as first trustee

If the beneficiary will act as the trustee of their own trust, you are nominating an alternative trustee or a corporate trustee you will resign as a trustee of the trust.

Recipe for successfully setting up a **testamentary trust** bank account

INGREDIENTS

- Certified copy of the Grant of Probate (will included)
- Testamentary Trust constitution (provided by Your Estate Lawyer and your accountant)
- Certified copy of the death certificate
- Tax File Number for the **testamentary trust** (not a personal tax file number)
- <u>100 points of ID</u> for the trustee (ie you, not the beneficiary)
- Bank forms
- Patience (lots of it)

<u>Optional ingredients if the beneficiary wishes to nominate a Corporate Trustee</u>

- Corporate trustee constitution
- 100 points of ID of the director of the corporate trustee

METHOD

1. Ask your accountant to recommend a bank or credit union they've successfully worked with to open a bank account on behalf of a testamentary trust.

2. Collect bank forms and ask your accountant to help you complete them.

3. Call the bank to book an in branch appointment (don't walk up to an unsuspecting bank teller). On the phone say "I'm the executor of a deceased estate and need to set up [number] of bank accounts for [corresponding number] of separate testamentary trusts. Can I please make an appointment with your most experienced bank employee?"

4. Attend your appointment with the bank in person (you cannot send Your Estate Lawyer to do this on your behalf) with your application forms and the supporting documentation listed above.

5. When the bank has approved the applications and the testamentary trust accounts have been opened funds can be transferred from the estate into the account for each beneficiary.

ESTATE YOUR LAWYER

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